IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

MONDAY, THE TWENTY FIRST DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT
THE HON'BLE MR JUSTICE M.H.S. ANSARI
and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 9046 & 9050 of 2004

Between:
Balaji Paper Products Office at Plot No.B-72, APIE,Balanagar, Hyderabad Rep. by its Proprietrix, Smt. Geetha Bai Kedia, W/o. Omprakash Kedia, R/o. 5-3-981, Fasijung Lane, J.N. Road, Hyderabad. **(Petitioner in W.P.No.9046 of 2004)**
Alpa Steel Industries Ltd., B-71, APIE, Balanagar, Hyderabad 500 037.Rep. by its Director Sri Anand Kedia, S/o. Sri. OM. Prakash Kedla, Aged about 30 years, R/o. 5-3-981, Fasijung Lane, J.N. Road, Hyderabad.
(Petitioner in W.P.No.9050 of 2004)

... PETITIONERS

AND

Assistant Zonal Manager and Commissioner A.P. Industrial Infranstructure Cooperation Ltd., Kukatpally Industrial Area Local Authority 12 and 13, 1st Floor
APIIC COMPLEX., I. E Kukatpally, Hyderabad-500 072.

...RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order, or direction more particularly one in the nature of writ of Mandamus declaring the Distrint Warrant issued by the Respondent as illegal, arbitrary, null and void and further declare that the Enhancement of 100% of property tax of the existing tax as well as collecting the Library Cess without providing the Library in the area, as illegal, arbitrary, and consequent set-aside the distrint warrant and direct the respondent not to collect the Library Cess until

Library is provided, and also direct the respondent not to enhance the property tax 100% and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.A.SAMEER KUMAR

Counsel for the Respondent: MR.E.MADAN MOHAN RAO

The Court at the admission stage, made the following:

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

COMMON ORDER: ***(Per Hon'ble Sri Justice M.H.S.Ansari)***

Having heard learned counsel for the petitioners and also the learned Standing Counsel for the respondent/Corporation, we are of

the view that no case has been made out for entertaining the instant writ petitions, for the reasons hereinafter stated.

2. Petitioners had questioned the Distrint Warrant issued by the respondent and further sought a direction for declaring the enhancement of property tax by 100% over the existing tax as illegal. It is not in dispute that the petitioners were served with a special notice of assessment under Rule 10(1)/11 of Schedule II to A.P. Municipalities Act, 1965 (hereinafter referred to as "the Act"). The basis for enhancement of the tax has been specified therein as also the nature of usage of the property.

3. In the accompanied special notice issued under Rule 4(1) of Schedule II to the Act, petitioners were informed that the property tax proposed to be enhanced over the existing tax and also the difference between the two being increase of tax and that the proposed enhancement is calculated on the existing plinth area of the unit and at the rate as notified in the District Gazettee R.R.26, dated 01.03.2002. It is the case of the petitioners that a representation was filed on 16.09.2003, same is not disputed by the respondent/Corporation. Although, it is the case of the respondent/Corporation that the said representation was disposed of by orders, dated 28.9.2003, petitioners disputed receiving the same. To carry on the narration, it may be stated that demand notice was issued on 27.9.2003 and thereafter, distrint warrant was issued under Rule 30(3) of Schedule II to the Act, which is impugned in the instant writ petitions. It is the contention of the petitioners as reiterated before Court by the learned counsel that petitioners were not afforded an opportunity of hearing on the representation submitted and thus, there has been violation of principles of natural justice and contravention of the Rules for

assessment as provided for in Schedule II to the Act.

4. The representation dated 16.09.2003 submitted by the petitioners to the special notice would show that only objection taken by the petitioners is that it is not possible for the petitioners to pay the high tax. The prayer of the petitioners appears to be for exemption from property tax on the ground that the factory of the petitioners is closed for want of orders from last three years.

5. It is thus apparent that petitioners had no substantive objection to the manner of assessment or tax as proposed to be enhanced. It is only the incapacity or inability of the petitioners to pay proposed tax that was made the subject of representation and prayer was for exempting the petitioner from payment of tax.

6. Though there is a provision for vacant remission in Section 92 of the Act, no provision of the Act has been brought to our notice, whereby a person can be exempted from payment of property tax merely on account of his inability to pay tax assessed or for closure of the factory.

7. If it is the case of the petitioners that property is exempted from payment of property tax, as such does not appear to be the objection taken warranting notice of hearing to be afforded to the petitioners.

8. For the reasons aforesaid, we are not inclined to entertain the writ petitions. The writ petitions are accordingly dismissed at the admission stage. No order as to costs.

_____

M.H.S.ANSARI, J

T.CH.SURYA RAO, J

Dated: 21.02.2005

RAR

To

1) Assistant Zonal Manager and Commissioner A.P. Industrial Infranstructure Cooperation Ltd., Kukatpally Industrial Rea Local Authority 12 and 13, 1st Floor
APIIC COMPLEX., I. E Kukatpally, Hyderabad.

2) 2 CD copies.